

AMENDED IN ASSEMBLY JULY 16, 2015

AMENDED IN ASSEMBLY JULY 7, 2015

AMENDED IN SENATE MAY 12, 2015

AMENDED IN SENATE APRIL 28, 2015

AMENDED IN SENATE APRIL 15, 2015

SENATE BILL

No. 762

Introduced by Senator Wolk

February 27, 2015

An act to amend Sections 10187.5 and 22161 of, and to add and repeal Article 3.7 (commencing with Section 20155) of Chapter 1 of Part 3 of Division 2 of, the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 762, as amended, Wolk. Competitive bidding: best value: pilot program: design-build.

The Local Agency Public Construction Act requires counties, among others, to comply with specified procedures for contracting for public works projects, including the use of a competitive bidding process and awarding contracts to the lowest responsible bidder. Existing law provides that specified provisions of the act applicable to public works contracts awarded by counties, as specified, do not apply to certain contracts by the County of Napa and the County of San Diego.

This bill would establish a pilot program to allow counties to select the lowest responsible bidder on the basis of best value, as defined, for construction projects in excess of \$1,000,000. The bill would establish procedures and criteria for the selection of a best value contractor. The

bill would require that bidders verify specified information under oath, thereby imposing a state-mandated local program by creating a new crime. The bill would require the board of supervisors of a participating county, before January 1, 2020, to submit a report to specified legislative committees. The bill would repeal the pilot program provisions on January 1, 2020.

Existing law, until January 1, 2025, authorizes the Department of General Services, the Department of Corrections and Rehabilitation, and certain local agencies to use the design-build procurement process for specified public works. Existing law defines “best value” for those purposes to mean a value determined by evaluation of objective criteria that may include, but are not limited to, price, features, functions, life-cycle costs, experience, and past performance.

This bill would modify that definition to have the objective criteria evaluated, instead, relate to those specific criteria.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 10187.5 of the Public Contract Code is
- 2 amended to read:
- 3 10187.5. For purposes of this article, the following definitions
- 4 and the definitions in subdivision (a) of Section 13332.19 of the
- 5 Government Code shall apply:
- 6 (a) “Best value” means a value determined by evaluation of
- 7 objective criteria that relate to price, features, functions, life-cycle
- 8 costs, experience, and past performance. A best value determination
- 9 may involve the selection of the lowest cost proposal meeting the
- 10 interests of the department and meeting the objectives of the
- 11 project, selection of the best proposal for a stipulated sum
- 12 established by the procuring agency, or a tradeoff between price
- 13 and other specified factors.
- 14 (b) “Construction subcontract” means each subcontract awarded
- 15 by the design-build entity to a subcontractor that will perform work

1 or labor or render service to the design-build entity in or about the
2 construction of the work or improvement, or a subcontractor
3 licensed by the State of California that, under subcontract to the
4 design-build entity, specially fabricates and installs a portion of
5 the work or improvement according to detailed drawings contained
6 in the plans and specifications produced by the design-build team.

7 (c) "Department" means the Department of General Services
8 and the Department of Corrections and Rehabilitation.

9 (d) "Design-build" means a project delivery process in which
10 both the design and construction of a project are procured from a
11 single entity.

12 (e) "Design-build entity" means a corporation, limited liability
13 company, partnership, joint venture, or other legal entity that is
14 able to provide appropriately licensed contracting, architectural,
15 and engineering services as needed pursuant to a design-build
16 contract.

17 (f) "Design-build team" means the design-build entity itself and
18 the individuals and other entities identified by the design-build
19 entity as members of its team. Members shall include the general
20 contractor and, if utilized in the design of the project, all electrical,
21 mechanical, and plumbing contractors.

22 (g) "Director" means, with respect to procurements undertaken
23 by the Department of General Services, the Director of General
24 Services or, with respect to procurements undertaken by the
25 Department of Corrections and Rehabilitation, the secretary of that
26 department.

27 SEC. 2. Article 3.7 (commencing with Section 20155) is added
28 to Chapter 1 of Part 3 of Division 2 of the Public Contract Code,
29 to read:

30
31 Article 3.7. Best Value Construction Contracting for Counties
32 Pilot Program
33

34 20155. (a) This article provides for a pilot program for counties
35 for construction projects in excess of one million dollars
36 (\$1,000,000).

37 (b) The board of supervisors of any county shall let any contract
38 for a construction project pursuant to this article to the lowest
39 responsible bidder or else reject all bids.

(c) The lowest responsible bidder may be selected on the basis of the best value to a county. In order to implement this method of selection, the board of supervisors shall adopt and publish procedures and required criteria that ensure that all selections are conducted in a fair and impartial manner. These procedures shall conform to Sections 20155.3 to 20155.6, inclusive, and shall be mandatory for counties who choose to participate in the pilot program.

(d) If the board of supervisors deems it to be in the best interest of the county, the board of supervisors, on the refusal or failure of the successful bidder for a project to execute a tendered contract, may award it to the second lowest responsible bidder. If the second lowest responsible bidder fails or refuses to execute the contract, the board of supervisors may likewise award it to the third lowest responsible bidder.

20155.1. As used in this article:

(a) “Best value” means a procurement process whereby the lowest responsible bidder may be selected on the basis of objective criteria with the resulting selection representing the best combination of price and qualifications.

(b) “Best value contract” means a contract entered into pursuant to this article.

(c) “Best value contractor” means a properly licensed person, firm, or corporation that submits a bid for, or is awarded, a best value contract.

(d) “Demonstrated management competency” means the experience, competency, capability, and capacity of the proposed management staffing to complete projects of similar size, scope, or complexity.

(e) “Financial condition” means the financial resources needed to perform the contract. The criteria used to evaluate a bidder’s financial condition shall include, at a minimum, capacity to obtain all required payment bonds, performance bonds, and liability insurance.

(f) “Labor compliance” means the ability to comply with, and past performance with, contract and statutory requirements for the payment of wages and qualifications of the workforce. The criteria used to evaluate a bidder’s labor compliance shall include, as a minimum, the bidder’s ability to comply with the apprenticeship requirements of the California Apprenticeship Council and the

1 Department of Industrial Relations, its past conformance with
2 those requirements, and its past conformance with requirements
3 to pay prevailing wages on public works projects.

4 (g) “Qualifications” means the financial condition, relevant
5 experience, demonstrated management competency, labor
6 compliance, and safety record of the bidder, and, if required by
7 the bidding documents, some or all of the preceding qualifications
8 as they pertain to subcontractors proposed to be used by the bidder
9 for designated portions of the work. A county shall evaluate
10 financial condition, relevant experience, demonstrated management
11 competency, labor compliance, and safety record, using, to the
12 extent possible, quantifiable measurements.

13 (h) “Relevant experience” means the experience of the bidder
14 with projects of similar size, scope, or complexity.

15 (i) “Safety record” means the prior history concerning the safe
16 performance of construction contracts. The criteria used to evaluate
17 a bidder’s safety record shall include, at a minimum, its experience
18 modification rate for the most recent three-year period, and its
19 average total recordable injury or illness rate and average lost work
20 rate for the most recent three-year period.

21 20155.2. As used in this article:

22 (a) “Apprenticeable occupation” means an occupation for which
23 the Chief of the Division of Apprenticeship Standards had approved
24 an apprenticeship program pursuant to Section 3075 of the Labor
25 Code prior to January 1, 2014.

26 (b) “Skilled and trained workforce” means a workforce that
27 meets all of the following conditions:

28 (1) All the workers are either skilled journeypersons or
29 apprentices registered in an apprenticeship program approved by
30 the ~~chief~~. *Chief of the Division of Apprenticeship Standards*.

31 (2) (A) As of January 1, 2016, at least 20 percent of the skilled
32 journeypersons employed to perform work on the contract or
33 project by the entity and each of its subcontractors at every tier
34 are graduates of an apprenticeship program for the applicable
35 occupation that was either approved by the Chief of the Division
36 of Apprenticeship Standards pursuant to Section 3075 of the Labor
37 Code or located outside California and approved for federal
38 purposes pursuant to the apprenticeship regulations adopted by
39 the federal Secretary of Labor.

1 (B) As of January 1, 2017, at least 30 percent of the skilled
2 journeypersons employed to perform work on the contract or
3 project by the entity and each of its subcontractors at every tier
4 are graduates of an apprenticeship program for the applicable
5 occupation that was either approved by the Chief of the Division
6 of Apprenticeship Standards pursuant to Section 3075 of the Labor
7 Code or located outside California and approved for federal
8 purposes pursuant to the apprenticeship regulations adopted by
9 the federal Secretary of Labor.

10 (C) As of January 1, 2018, at least 40 percent of the skilled
11 journeypersons employed to perform work on the contract or
12 project by the entity and each of its subcontractors at every tier
13 are graduates of an apprenticeship program for the applicable
14 occupation that was either approved by the Chief of the Division
15 of Apprenticeship Standards pursuant to Section 3075 of the Labor
16 Code or located outside California and approved for federal
17 purposes pursuant to the apprenticeship regulations adopted by
18 the federal Secretary of Labor.

19 (D) As of January 1, 2019, at least 50 percent of the skilled
20 journeypersons employed to perform work on the contract or
21 project by the entity and each of its subcontractors at every tier
22 are graduates of an apprenticeship program for the applicable
23 occupation that was either approved by the Chief of the Division
24 of Apprenticeship Standards pursuant to Section 3075 of the Labor
25 Code or located outside California and approved for federal
26 purposes pursuant to the apprenticeship regulations adopted by
27 the federal Secretary of Labor.

28 (E) As of January 1, 2020, at least 60 percent of the skilled
29 journeypersons employed to perform work on the contract or
30 project by the entity and each of its subcontractors at every tier
31 are graduates of an apprenticeship program for the applicable
32 occupation that was either approved by the Chief of the Division
33 of Apprenticeship Standards pursuant to Section 3075 of the Labor
34 Code or located outside California and approved for federal
35 purposes pursuant to the apprenticeship regulations adopted by
36 the federal Secretary of Labor.

37 (F) For an apprenticeable occupation in which no apprenticeship
38 program had been approved by the ~~chief~~ *Chief of the Division of*
39 *Apprenticeship Standards* prior to January 1, 1995, up to one-half
40 of the graduation percentage requirements of ~~subparagraph (B)~~

1 *subparagraphs (A) through (E), inclusive*, may be satisfied by
2 skilled journeypersons who commenced working in the
3 apprenticeable occupation prior to the chief's approval of an
4 apprenticeship program for that occupation in the county in which
5 the project is located.

6 (c) "Skilled journeyperson" means a worker who either:

7 (1) Graduated from an apprenticeship program for the applicable
8 occupation that was approved by the ~~chief~~ *Chief of the Division*
9 *of Apprenticeship Standards* or located outside California and
10 approved for federal purposes pursuant to the apprenticeship
11 regulations adopted by the federal Secretary of Labor.

12 (2) Has at least as many hours of on-the-job experience in the
13 applicable occupation as would be required to graduate from an
14 apprenticeship program for the applicable occupation that is
15 approved by the ~~chief~~ *Chief of the Division of Apprenticeship*
16 *Standards*.

17 20155.3. A county shall proceed in accordance with the
18 following when awarding best value contracts under this article:

19 (a) A county shall not select a lowest responsible bidder on the
20 basis of the best value to a county unless, after evaluating at a
21 public meeting the alternative of awarding the contract on the basis
22 of the lowest bid price, the county makes a written finding that
23 awarding the contract on the basis of best value, for the specific
24 project under consideration, will accomplish one or more of the
25 following objectives: reducing project costs, expediting the
26 completion of the project, or providing features not achievable
27 through awarding the contract on the basis of the lowest bid price.

28 (b) A county shall prepare a solicitation for bids and give notice
29 pursuant to Section 20125. A county may identify specific types
30 of subcontractors that are required to be included in the bids. A
31 county shall comply with Chapter 4 (commencing with Section
32 4100) of Part 1 with regard to construction subcontractors identified
33 in the bid.

34 (c) A county shall establish a procedure to prequalify bidders
35 pursuant to Section 20101. The information required pursuant to
36 this section shall be verified under oath by the bidder in the manner
37 in which civil pleadings in civil actions are verified. Information
38 submitted by the bidder as part of the evaluation process shall not
39 be open to public inspection to the extent that information is
40 exempt from disclosure under the California Public Records Act

1 (Chapter 3.5 (commencing with Section 6250) of Division 7 of
2 Title 1 of the Government Code).

3 (d) Each solicitation for bids shall do all of the following:

4 (1) Invite prequalified bidders to submit sealed bids in the
5 manner prescribed by this article.

6 (2) Include a section identifying and describing the following:

7 (A) Criteria that a county will consider in evaluating bids.

8 (B) The methodology and rating or weighting system that will
9 be used by a county in evaluating bids.

10 (C) The relative importance or weight assigned to the criteria
11 identified in the request for bids.

12 (e) Final evaluation of the best value contractor shall be done
13 in a manner that prevents cost or price information from being
14 revealed to the committee evaluating the qualifications of the
15 bidders prior to completion and announcement of that committee's
16 decision.

17 20155.4. (a) A best value entity shall not be prequalified or
18 shortlisted unless the entity provides an enforceable commitment
19 to the local agency that the entity and its subcontractors at every
20 tier will use a skilled and trained workforce to perform all work
21 on the project or contract that falls within an apprenticeable
22 occupation in the building and construction trades.

23 (b) An entity's commitment that a skilled and trained workforce
24 will be used to perform the project or contract may be established
25 by any of the following:

26 (1) The entity's agreement with the county that the entity and
27 its subcontractors at every tier will comply with the requirements
28 of this ~~subdivision~~ *section* and that the entity will provide the
29 county with evidence, on a monthly basis while the project or
30 contract is being performed, that the entity and its subcontractors
31 are complying with the requirements of this ~~subdivision~~ *section*.

32 (2) If the county has entered into a project labor agreement that
33 will bind all contractors and subcontractors performing work on
34 the project or contract, and that includes the requirements of this
35 ~~subdivision~~ *section*, the entity's agreement that it will become a
36 party to that project labor agreement.

37 (3) Evidence that the entity has entered into a project labor
38 agreement that includes the requirements of this section and that
39 will bind the entity and all its subcontractors at every tier
40 performing the project or contract.

1 20155.5. Selection of the best value contractor shall be made
2 as follows:

3 (a) (1) An evaluation committee appointed by the county shall
4 evaluate the qualifications of the bidders based solely upon the
5 criteria set forth in the solicitation documents, and shall assign a
6 qualifications score to each bid.

7 (2) A county shall establish written policies and procedures,
8 consistent with applicable law, to ensure that members of an
9 evaluation committee are free from conflicts of interest, if the
10 county has not already established applicable written policies and
11 procedures.

12 (b) A county shall not award a contract for a construction project
13 pursuant to this article if a solicitation for bids for that construction
14 project results in the submission of fewer than three responsive
15 bids to the county for evaluation.

16 (c) The award of the contract shall be made to the bidder whose
17 bid is determined by a county, in writing, to be the best value to a
18 county. To determine the best value contractor, the county shall
19 divide each bidder's price by its qualifications score. The lowest
20 resulting cost per quality point will represent the best value bid.

21 (d) A county shall issue a written decision of its contract award.

22 (e) Upon issuance of a contract award, a county shall publicly
23 announce its award identifying the best value contractor to which
24 the award is made, the project, the project price, and the selected
25 best value contractor's score based on the evaluation criteria listed
26 in the request for bids. The notice of award shall be made public
27 and include the score of the selected best value contractor in
28 relation to all other responsive bidders and their respective prices.
29 The contract file shall include documentation sufficient to support
30 the decision to award.

31 20155.6. (a) If the county elects to award a project pursuant
32 to this article, retention proceeds withheld by the ~~district~~ *county*
33 from the selected best value contractor shall not exceed 5 percent
34 if a performance and payment bond, issued by an admitted surety
35 insurer, is required in the solicitation of bids.

36 (b) In a contract between the selected best value contractor and
37 a subcontractor, and in a contract between a subcontractor and any
38 subcontractor thereunder, the percentage of the retention proceeds
39 withheld shall not exceed the percentage specified in the contract
40 between the ~~district~~ *county* and the selected best value contractor.

1 If the selected best value contractor provides written notice to a
2 subcontractor that, prior to or at the time the bid is requested, a
3 bond may be required and the subcontractor subsequently is unable
4 or refuses to furnish a bond to the selected best value contractor,
5 then the selected best value contractor may withhold retention
6 proceeds in excess of the percentage specified in the contract
7 between the ~~district~~ *county* and the selected best value contractor
8 from any payment made by the selected best value contractor to
9 the subcontractor.

10 20155.7. (a) Before January 1, 2020, the board of supervisors
11 of a participating county shall submit a report to the appropriate
12 policy committees of the Legislature and the Joint Legislative
13 Budget Committee. The report shall include, but is not limited to,
14 the following information:

15 (1) A description of the projects awarded using the best value
16 procedures.

17 (2) The contract award amounts.

18 (3) The best value contractors awarded the projects.

19 (4) A description of any written protests concerning any aspect
20 of the solicitation, bid, or award of the best value contracts,
21 including the resolution of the protests.

22 (5) A description of the prequalification process.

23 (6) The criteria used to evaluate the bids, including the weighting
24 of the criteria and an assessment of the effectiveness of the
25 methodology.

26 (7) If a project awarded under this article has been completed,
27 an assessment of the project performance, to include a summary
28 of any delays or cost increases.

29 (b) A report submitted pursuant to subdivision (a) shall be
30 submitted in compliance with Section 9795 of the Government
31 Code.

32 20155.8. Except as otherwise provided in this article, this article
33 is not intended to change in any manner any guideline, criteria,
34 procedure, or requirement of a county to let any contract for a
35 project to the lowest responsible bidder or else reject all bids.

36 20155.9. This article shall remain in effect only until January
37 1, 2020, and as of that date is repealed.

38 SEC. 3. Section 22161 of the Public Contract Code is amended
39 to read:

22161. For purposes of this chapter, the following definitions apply:

(a) “Best value” means a value determined by evaluation of objective criteria that relate to price, features, functions, life-cycle costs, experience, and past performance. A best value determination may involve the selection of the lowest cost proposal meeting the interests of the local agency and meeting the objectives of the project, selection of the best proposal for a stipulated sum established by the procuring agency, or a tradeoff between price and other specified factors.

(b) “Construction subcontract” means each subcontract awarded by the design-build entity to a subcontractor that will perform work or labor or render service to the design-build entity in or about the construction of the work or improvement, or a subcontractor licensed by the State of California that, under subcontract to the design-build entity, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications produced by the design-build team.

(c) “Design-build” means a project delivery process in which both the design and construction of a project are procured from a single entity.

(d) “Design-build entity” means a corporation, limited liability company, partnership, joint venture, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services as needed pursuant to a design-build contract.

(e) “Design-build team” means the design-build entity itself and the individuals and other entities identified by the design-build entity as members of its team. Members shall include the general contractor and, if utilized in the design of the project, all electrical, mechanical, and plumbing contractors.

(f) “Local agency” means the following:

(1) A city, county, or city and county.

(2) A special district that operates wastewater facilities, solid waste management facilities, water recycling facilities, or fire protection facilities.

(3) Any transit district, included transit district, municipal operator, included municipal operator, any consolidated agency, as described in Section 132353.1 of the Public Utilities Code, any joint powers authority formed to provide transit service, any county

1 transportation commission created pursuant to Section 130050 of
2 the Public Utilities Code, or any other local or regional agency,
3 responsible for the construction of transit projects.

4 (g) (1) For a local agency defined in paragraph (1) of
5 subdivision (f), “project” means the construction of a building or
6 buildings and improvements directly related to the construction
7 of a building or buildings, county sanitation wastewater treatment
8 facilities, and park and recreational facilities, but does not include
9 the construction of other infrastructure, including, but not limited
10 to, streets and highways, public rail transit, or water resources
11 facilities and infrastructure. For a local agency defined in paragraph
12 (1) of subdivision (f) that operates wastewater facilities, solid waste
13 management facilities, or water recycling facilities, “project” also
14 means the construction of regional and local wastewater treatment
15 facilities, regional and local solid waste facilities, or regional and
16 local water recycling facilities.

17 (2) For a local agency defined in paragraph (2) of subdivision
18 (f), “project” means the construction of regional and local
19 wastewater treatment facilities, regional and local solid waste
20 facilities, regional and local water recycling facilities, or fire
21 protection facilities.

22 (3) For a local agency defined in paragraph (3) of subdivision
23 (f), “project” means a transit capital project that begins a project
24 solicitation on or after January 1, 2015. A “project,” as defined by
25 this paragraph, that begins the solicitation process before January
26 1, 2015, is subject to Article 6.8 (commencing with Section
27 20209.5) of Chapter 1. “Project,” as defined by this paragraph,
28 does not include state highway construction or local street and
29 road projects.

30 SEC. 4. No reimbursement is required by this act pursuant to
31 Section 6 of Article XIII B of the California Constitution because
32 the only costs that may be incurred by a local agency or school
33 district will be incurred because this act creates a new crime or
34 infraction, eliminates a crime or infraction, or changes the penalty
35 for a crime or infraction, within the meaning of Section 17556 of
36 the Government Code, or changes the definition of a crime within
37 the meaning of Section 6 of Article XIII B of the California
38 Constitution.

O